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File No. O. Merchant Shipping /41.

Legal **DEPARTMENT**

A. **BRANCH**

Subject:—

Opinions under the

Indian Merchant Shipping

Act, 1923.

File No. O. Merchant Shipping /41.

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The Crown by virtue of its prerogative is entitled to all unclaimed wracks. including flotsam, jetsam, legan or ligan and derelict found in or on the k shores of the sea or any tidal water in any part of the dominions of the crown except in places where the right has been granted to any other person. (Halsbury, Vol. VI, page 1204, para 529). Certain franchises such as wrecks, while they remain in the hands of Crown, form part of its prerogative and do not exist as franc until they ahve been granted out as such to the subject. Such franchises may be claimed either by grant, or by long and immemorial usage and prescription, which presupposes a former grant; and in the letter case twenty years' uninterrupted enjoyment is, in general, presumptive evidence in favour of a claimant. (Halsbury, Vol. VI, page 580 para. 740). The pre-British sanad under which the Inamadar of Perim held the island is not traceable. The summary settlement sanad under which the inamadar now holds the island contains no express grant is thus doubtful. It appears however that the inamdar has enjoyed the franchise in respect of unclaimed wreck for a considerable number of years. Although in a suit to establish his claim in a court of law, it would be for him to prove his continued enjoyment of the right for the full prescriptive period of twenty years, it would be safer to allow his claim unless there is evidence to show that Government has exercised that right within legal memory.

~~D.C.~~ Sd/- P.V.M. 7/5

Remembrancer of Legal Affairs.

U.R. to R.D. No. 4249 dated the 9th May 1941.

S.C.

Submitted.

Pp. 1-4 ante. From the letter of the Chairman Port Haj Committee, Bombay, dated 3.12.1941, it appears that one Haji Ahmad Abdulla Ramzani a subject of Saudi Arab Govt, who holds a valid passport of the Saudi Arab Govt, came to India probably to canvass pilgrims. As he himself wants to perform the pilgrimage he approached the Mogul Line Ltd. for booking his passage. The Mogul line however, refused to book his passage on the following grounds. namely :-

Vide pp. 13-15 Ds

(1) That part IV of the Indian Merchant Shipping Act, 1923, of which is section 208-B is part, is applicable only to "subjects of His Majesty" while the passenger is a "subject of Saudi Arab Govt." and

(2) that the passenger is alleged to be a "Mutawif" and not a pilgrim.

P. 21 ante The R.L.A. is requested to advise whether the above contentions of Messrs. Turner Morris on and Coy. Ltd. are correct

2. Section 147 (1) of the Indian Merchant Shipping Act, 1923, provides that Part IV applies --

(a) to all subjects of His Majesty within any Indian State;

(b) to all Indian subjects of His Majesty without and beyond British India.

The Act applies to British India, and section 147(1) is specially enacted to make the provisions of Part IV applicable to all Subjects of His Majesty within any Indian State and to all Indian.

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Subjects of His Majesty without and beyond British India. This provision, however does not in any way appear to affect the meaining of the term "pilgrim" as defined in section 149(3) of the Act. The term "pilgrim" means a Muhammadan passenger going to, or returning from, the Hedjaz and does not include a child under once year of age. Under Explanation I a Mahammadan passenger who has emberked with the intention of going to Hedjaz but is returning without having actually landed there shall be deemed to be a "pilgrim" for the purposes of the Act. Explanation II further provides that every passenger whether a pilgrim or not on board a pilgrim ship shall be deemed to be a pilgrim for the purposes of Part IV. Section 206(1) provides that no pilgrim shall be received on board any pilgrim ship at any port or place in British India unless and until he ~~she~~ has been medically inspected in such manner as the Central Govt. may fix nor until the certifying officer has given permission for the embarkation of pilgrims to commence. Under section 206 (1A) no pilgrims shall be received on board any pilgrim ship unless he produced a medical certificate showing that he has been inoculated against cholera and vaccinated against small pox etc. Section 207 provides for removal of a passenger from the ship if he is found to be suffering from

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Section 208B in Part IV of the Indian Merchant Shipping Act, 1923, inter alia provides that every pilgrim travelling on a pilgrim ship shall be entitled, on payment of his passage money and fulfilment of other prescribed conditions if any, to receive a ticket in the prescribed form. "Pilgrim" as defined in section 149(3) means a Muhammedan irrespective of a going to or returning from the Hedjaz. Explanation I states that a Muhammedan passenger who has embarked with the intent of going to the Hedjaz, but is returning without having actual landed there shall be deemed to be a pilgrim for the purposes of this Act, while Explanation II states that every passenger, whether a pilgrim or not, on board a pilgrim ship shall be deemed to be a pilgrim for the purposes of this Part (i.e.Part IV). It is clear from these provisions that to claim the benefit of section 208B it is sufficient if the person concern is a Muhammedan pilgrim and it is immaterial whether he is a foreigner or a British Subject. It is true that section 147 enacts that this Part (i.e.Part IV) applies --

(a) to all subjects of His Majesty within any Indian State.

(b) to all Indian Subjects of His Majesty without and beyond British India.

But this section merely provides for extra territorial application and does not exclude foreigners in British India from the benefits conferred under any of the provisions of Part. IV. (cf. note on clause 11, new section 208A of the Statement of Objects and Reasons published at page 141 of the Gazette of India, 1932, Part V. Consequently the contention of the Mogul Line Ltd. that Mr. Haji Ahmad Abdulla Ramzani cannot claim to be entitled to a ticket under section 208B on t ground that he is a foreigner and as such he is by implication excluded by section 147 is without force. Such a position is also in accord with the Common Law of England under which a passenger can always demand toobe carried by a common carrier (The common Law of Angla nd by Black Odgers and

and another Part I,p.649). a common carrier of passengers is under a duty to carry anyone who offers himself for carriage and is ready to pay the fare, so long as there is sufficient accommodation (see Halbury Vol.4 page 60 para 89). Carriers by sea for hire are common carriers (38 Mad. 941).

2. It is stated in the letter of the Chairman port Haj Committee that Mutawif is a person whose business is to render an assistance to pilgrims at the time of the Haj and the Mutawif himself invariably performs Haj and is therefore a pilgrim. In these circumstances it is clear that the definition of "pilgrim" in section 149(2) read with the explanation thereto is sufficiently wide to cover a Mutawif. Consequently the Mogul Line Ltd. would not be justified in refusing to book a passage for Mr. Haji Ahmad either on the ground of his being a foreigner or a Mutawif.

Sd/- P.N.M.
15/12

Remembrancer of Legal Affairs.

U.R. to P. & S.D. No. 10825 dated the 15th December 1941.